WP(C) 7344/2002
BEFORE
HON'BLE MR. JUSTICE H.N. SARMA

The subject matter of challenge in this writ petition is an orde r dated 3/12/01 passed by the Commissioner and Secretary to the Govt. of Assam, Revenue Department in Land Ceiling Case No. 7/74-75 by which the revision filed by the petitioner under Section 7' of the Assam Fixation of Ceiling on Land Hol ding Act, 1956 passed by Collector, Cachar and the claim of the petitioner to e xclude an area of land measuring 16821 bigha 16 katha 4 lecha of land of Hatiche rra Tea Estate from the purview of the Land Ceiling Case No.7/74-75 was rejected .

2) I have heard Mr. PK Roy, learned counsel for the petitioner and Ms. H. Phukan, learned State Counsel, Assam, and Mr. AK Purkayastha, learned cou nsel appearing for the subsequently impleaded respondents Nos. 5 to 12.

3) The petitioner is a company and the owner of two tea estates whi ch are registered as Haticherra Tea Estate and Subong Tea Estate situated in the district of Cachar. The pleaded case of the petitioner interalia is that the af oresaid two tea gardens were leased out to one M/s K. Shashikant & Co. by the pe titioner for a period of three years and possession was handed over to the lesse e. However, after a period of three years the lessee not having returned the po ssession of the tea estates, the petitioner had to approach the civil court and ultimately at the intervention of the Apex Court, a receiver was appointed in re spect of the two tea estates, pending disposal of the civil litigation.

4) The receiver so appointed to run and manage the two tea estates having failed to effectively manage the gardens, the petitioner again approached the Supreme Court and the Hon'ble Apex Court by order dated 8/3/83 directed the receiver to offer possession to the petitioner and accordingly the petitioner t ook possession of the two tea gardens in the middle of 1983.

5) After taking possession of the gardens the petitioner proposed t o utilize certain areas of the two gardens for certain ancillary purposes by way of plantations of rubber, coffee and other valuable forest products and to that effect a scheme was also prepared and it was submitted to the various financial institutions. Meanwhile, vide order dated 30/10/91, the Collector, Cachar, decl ared an area of 16,000 Bighas 4 Lechas, belonging to those Tea Estates as Ceilin g Surplus Land as per spot verification and on the report submitted by the Assis tant Settlement Officer of the Circle. The aforesaid order was challenged by the petitioner in CR No. 4587/1991, which was disposed of on 27/04/93 with the dire ction that the petitioner to file appropriate Revision Petition under Section 7 of the Assam Fixation of Ceiling on Land Holding Act, 1956, within a period of 2 (two) months with further observations to the revisional authority to consider the claim of the petitioner that in the land in question the petitioner has star ted planting rubber, bamboo, coffee etc. in a substantial portion of both the Te a Estates. It was also directed to the authority to consider that whether in vie w of such plantations, the land shown as surplus land fall within such categorie s within the meaning of 'land' as per Section 3(f) of the Act, in terms of the r atio of decisions rendered in the case of Baruduar Tea and Timber Company -vs- S ub-Divisional Officer, Gauhati reported in AIR 1973 GAU 131.

6) After passing of the aforesaid Judgment, the petitioner did not file any such revision petition for a period of five years and when the Governme nt in the Revenue Department instructed the Collector/ Deputy Commissioner, Cach ar, to complete the proceedings, the petitioner claimed that they submitted such a Revision Petition before the Government well within time. In view of such a s tand taken by the petitioner they were provided with an opportunity to press the ir case but in spite of such opportunity the petitioner did not avail the same a nd ultimately the impugned order dated 03/12/2001 was passed rejecting the claim

of the petitioner.

7) Mr. P K Roy, learned counsel for the petitioner submits that the petitioner might not have been vigilant enough and might not attend before the authority as directed but that will not absolve the authority from deciding the issue as to whether the land is a surplus land within the meaning of the Act in view of the earlier judgment passed by this Court. Mr Roy, further submits that the petitioner over a sizable portion of the alleged surplus land the petitioner having planted rubber, bamboo, coffee etc. the same cannot be categorized as ' surplus land' within the meaning of Section 3(f) of Assam Fixation of Ceiling on Land Holding Act, 1956, as interpreted by the High Court in the case of Bardia Tea and Timber Co.(supra).

8) Ms. Phukan, learned Government Advocate, referring to the impugned order submits that the petitioner was grossly negligent in substantiating their claim that there plantations were grown over the land in question and for such failure of the petitioner to substantiate their claim, the authority has rightly passed the impugned order. It is further contended that the impugned order has been passed in compliance with the provisions of the Act, 1956 and there is no irregularity or illegality in passing the same.

9) Mr. Purkayastha, learned counsel appearing for the impleaded private respondents submits that after finalization of the proceedings of Land Ceiling Case No. 7/74-75, the private respondents are in possession in respect of a sizable portion of the land and they are residing therein by constructing residential houses with their family and accordingly, the claim of the petitioner about plantations of rubber, bamboo, coffee etc. in the said land is incorrect.

10) I have considered the rival submissions made by the counsels for the respective parties. From the record, it appears that a substantial portion of the area having sought to be acquired by the National Highway Authority with a view to construction of the 4th lane East West Corridor, on the prayer of the National Highway authority, who was also impleaded as a party respondent, the interim order passed earlier was vacated for such construction of roads vide order dated 16/03/06.

11) It is submitted at the Bar that the National Highway Authority has already started construction of roads in a portion of the land earmarked as ceiling surplus land as projected in this case and there is no dispute in this point.

12) On the face of the rival submission, so made on behalf of the respective parties, it is required to be find out whether the claim of the petitioner about plantations of valuable forest trees in the surplus land could be substantiated even prima facie.

13) From the averments made in the writ petition, it is absolutely clear that the petitioner was out of possession of the tea estates since 1969 and such possession could only be obtained in the middle of the year 1983. Thereafter, the petitioner took steps for utilizing the said area for growing ancillary forest products by plantations of rubber, bamboo, tea, coffee etc.

14) The Assam Fixation of Ceiling on Land Holding Act, 1956 was amended from time to time. By the Assam Act, Vol.-IX of 1975 dated 16/9/75, the maximum ceiling of land was fixed at 50 Bigha. That apart, a maximum area of 4 Bigha over the 50 Bigha was allowed if a person is found to have used such area as orchard.

15) After amendment of the Act in the year, 1975, the petitioner is not entitled to hold more than 50 Bigha with additional 4 Bigha as orchards unde

r the Act. It is admitted / pleaded case of the petitioner itself that the petitioner took such steps for plantations of Bamboo, Coffee, Tea etc. only after 1983, by which time the maximum ceiling of 50 Bigha is already enforced.

16) However, Mr. PK Roy is right in his submission that there is no specific mention to that effect in the impugned order.

17) Accordingly, upon consideration of the materials its entirety, the matter is remanded back to the State Government in the Revenue Department to be reconsidered by the Commissioner and Secretary of Government of Assam, Revenue Department who shall find out the aforesaid position, namely, whether such plantations, if at all there is any part of the land in question shown as ceiling surplus land in respect of the aforesaid two Tea Gardens is made before coming in to operation of the of the Assam Act, Vol.-IX, 1975. It is made clear that for this purpose there may not be any necessity for field verification, if the query can be answered on the basis of record.

18) This shall be done within a period of 6(six) weeks weeks from the date of receipt of the certified copy of this order and the petitioner would be entitled to furnish a copy of this order before the concerned authority for doing the needful.

19) If the petitioner remains absent or do not act upon as per this order, the authority would be entitled to proceed in accordance with law.

20) For the aforesaid period of 6(six) weeks, no further action on the basis of the impugned order dated 3/12/2001 passed by the Commissioner and Secretary to the Government of Assam, Revenue Department be undertaken and thereafter, the Collector-cum-Deputy Commissioner, Cachar would be entitled to follow as per the order of the authority for finalizing the proceeding of the ceiling case.

21) Upon the aforesaid considerations, if the authority finds that there are some plantations of Bamboo, Coffee, Tea and other valuable forest materials etc. as claimed, to be planted by the petitioner prior to coming into force of the amendment vide Assam Act of 1975, they shall pass appropriate order(s) excluding that part of the area which is shown as ceiling surplus land otherwise the matter would be disposed of as per order passed by the Collector.

22) With the aforesaid observations and directions, the writ petition stands disposed of.